

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN J. McCARTHY,

Plaintiff

vs.

WARDEN EBBERT, *et al.*,

Defendants

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CIVIL NO. 1:CV-17-0397

(Judge Caldwell)

M E M O R A N D U M

I. *Introduction*

Plaintiff, John McCarthy, a former federal inmate, initiated this action on February 23, 2017, while housed at the United States Penitentiary in Lewisburg, Pennsylvania.¹ (ECF No. 1, Compl.) Presently before the Court is McCarthy's motion for leave to proceed *in forma pauperis*. (ECF No. 8).

For the reasons that follow, McCarthy's motion will be denied without prejudice. McCarthy will have fourteen days to file a correct application to proceed *in forma pauperis* or pay the entire filing fee. His failure to do either will result in his action being dismissed without prejudice.

II. *Discussion*

A "prisoner" is defined in the statute as "any person *incarcerated or detained in any facility* who is accused of, convicted of, sentenced for, or adjudicated delinquent for,

¹ McCarthy is no longer incarcerated and presently resides in Connecticut. (ECF No. 5).

violations of criminal laws or the terms and conditions of parole . . .” 28 U.S.C. § 1915A(c) (emphasis added). If a plaintiff is a prisoner at the time of filing the complaint, the Prison Litigation Reform Act (PLRA) and its *in forma pauperis* statute applies. *Ahmed v. Dragovich*, 297 F.3d 201, 210 (3d Cir. 2002).

In this matter, McCarthy was erroneously sent a copy of an *in forma pauperis* application for a non-inmate. Because McCarthy was a prisoner when he filed his Complaint, the Clerk of Court shall be directed to furnish him with a blank copy of this Court's current standard prisoner *in forma pauperis* form. If Plaintiff seeks to proceed with this case *in forma pauperis*, he shall complete the form and return it to the Clerk of Court within fourteen days. He must also include a certified copy of his inmate trust fund account for the 6-month period immediately proceeding the filing of the complaint. See 28 U.S.C. § 1915(a)(2). If McCarthy does not wish to proceed *in form pauperis* in this matter, he may forward the complete filing fee to the Clerk of Court within fourteen days. Failure to either submit a complete inmate *in forma pauperis* application or the complete filing fee within fourteen days will result in the dismissal of this action.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge

Date: May 23, 2017